

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. B-168/1976

BETWEEN

LORENZO BROWN)
MARTIN McPHERSON }

PLAINTIFFS

AND

ST. ANN PARISH COUNCIL)
STANLEY MARTIN)
NORRIS DALEY }

DEFENDANTS

Mr. D. Jones for plaintiff instructed by Messrs Myers, Fletcher and Gordon, Manton and Hart.

Mr. Daley for defendants, instructed by Messrs Daley, Walker and Lee Hing.

Heard On: March 24, 25, 26, 1980; March 2, 1981

Handed down: May 15, 1981

JUDGMENT

ROSS J.

In this case the plaintiffs seek damages for the unlawful demolition of a building at Mamme Bay in the parish of St. Ann by the defendants, for the loss of goods stored in the building at the time, and for loss of earnings, as they had allegedly carried on the business of curio vendors in the building.

In their defence the defendants admit the demolition of a shack pursuant to statutory powers given to the first defendant under and by virtue of Section 24 of the Town and Country Planning Act and say that if (which they do not admit) the shack belonged to the plaintiffs they are not liable to the plaintiffs for any loss occasioned thereby; the defendants went on to say that certain goods were removed by them from the building before its demolition and subsequently handed over to the true owners who were not the plaintiffs.

One plaintiff, Mr. Martin McPherson, gave evidence. He related that he was a curio vendor and that Mr. Brown and himself

were in this business together; that he lived and carried on business at Mamme Bay, where he erected a building and carried it and placed it on land at Mamme Bay belonging to the other plaintiff Lorenzo Brown; he did not get permission from the St. Ann Parish Council to put up the building and in June, 1975, the building which housed his shop was broken down and the goods there-in taken away; that he was absent when the building was demolished and he went to the police station three days after, and from the police station to the Parish Council, where he spoke to the Superintendent of Roads and Works, Mr. Stanley Martin; that he enquired of Mr. Martin about his goods and was told that until the Council was paid for destroying the place the goods would not be given up; that he was given a piece of paper on the day before the building was destroyed by Mr. Vincent Richardson, and this paper, written in red ink advised that all shacks will be destroyed, and was the only notification he had.

This paper was put in evidence as exhibit 3 and is interesting, as if it did come from the Parish Council, it suggests a very casual approach to work by the Council's employees; it will be noted at the same time that Mr. McPherson did not say that this was the notice the Council left, but only that this paper was handed to him by Mr. Vincent Richardson on the day before the shop was demolished.

The exhibit reads as follows:-

"No.11 "

" ATTENTION "

" Please be advised that

ALL SHACKS

" Shall be demolished

" on Thursday 5th June 1975

You have been WARNED

" By Order

" P.C.S.A.

" PARISH COUNCIL ST. ANN "

It seems most surprising that Mr. McPherson having received this notice on the day before the demolition and having taken the notice seriously (since he kept it) was absent from the

shop when it was demolished and gave no reason for his absence. Mr. McPherson also testified that he valued the building destroyed at \$5,000.00 and the goods in it at \$5,196.10; he produced a list of the articles which he says were in the shop immediately before its demolition. He was cross-examined at some length and told us, inter alia: that having spoken to the Superintendent about his goods three days after the shop was demolished on 6th June, 1975 he did not go back to the Parish Council until 1979 when, having gone there about another matter, he enquired of the Mayor about his goods; that he knew the Mayor very well (although the Mayor in evidence said that that day he gave evidence was the first time he was seeing plaintiff McPherson); that he was in curio business for eight (8) months from October 1974; that Mr. Vincent Richardson played no part in putting up his building and only came there about seven (7) months after it was built; that his building was made of wolmanised board and zinc and concrete at the bottom; that he bought board and zinc and cement and paint for his building and he got a lot of people to help him with the building of it; that he didn't know the Mayor when the building was being built, and that the building was built and carried to the site it occupied; that he did not go back to the Parish Council because he was in communication with his attorney, Mr. D. Richardson; that he made a list of goods in the building a few days after it was demolished and gave the list to his attorney; that this building was not a shack, it was a proper building and it looked good, tourists taking pictures of it every day; that he does not know whether or not a proper notice was posted on the shop (which is surprising as if he carried on business there daily he should have known whether or not a notice was pasted on the shop), that the size of his shop was 12ft X 12ft and it had a room attached at the back which was 8ft X 12ft, in which he lived, and that the shop was 12ft high in front and 9ft high at back; that he arrived at a valuation of \$5,000.00 for the building as he got a valuator to value it in 1975 after the shop was demolished; that he was able to prepare a list of goods in shop

after it was demolished because: " I had a few list of some goods and I made the rest from personal knowing."

The above is a brief outline of the evidence given by Mr. McPherson on behalf of himself and Mr. Brown, as plaintiffs in this action. I had expected Mr. Brown to give evidence of his role in this partnership with Mr. McPherson but it appears that he was a silent partner in this enterprise and, true to his role, he was silent at the trial.

Turning now to the evidence adduced on behalf of the defendants the first witness was His Worship the Mayor of St. Ann's Bay, Councillor Samuel Campbell, who related that around November, 1974, a few shacks were going up by the roadside in the Mammee Bay area, an area which he knew very well as he passed there sometimes three times per day; that he stopped and spoke to one Mr. Vincent Richardson who was putting up one of these shacks; that it was constructed by digging holes in the ground and it took about a month to build it; that he saw him building the shack everyday he passed there and spoke to him; that he had never seen plaintiff Mr. McPherson before seeing him in Court; that he gave instructions to the Superintendent of Roads and Works to demolish the shacks immediately as they were on the road bank and unsightly; that there was no approval for any building on or sub-division of that piece of land on which the shacks were placed; that the matter came before the Council for approval in January, 1975 and a resolution was passed unanimously and signed by him; that since the Council was sued he has tried to find Vincent Richardson, but without success.

The Mayor was vigorously cross-examined by Mr. Jones and he denied the suggestion put to him that Vincent Richardson was an invention for the purpose of this case - it should be noted here that the plaintiff in his evidence first introduced Vincent Richardson in this case by telling us that it was Vincent Richardson who handed him the notice marked exhibit 3 and it

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would be an extraordinary coincidence if they were speaking of a different person with the same name. The Mayor further testified that he had never seen either plaintiff at the building; that the building was east of the Hilton Hotel gate and on the southern side of the main road; that the building was not adjacent to the Arawak Post Office; that by "adjacent" he meant "joining on".

Mr. Howard Bembridge, the retired building inspector for the Council, stated that he saw shacks being **constructed** at a location south of the main road at Mammee Bay and a couple of chains east of the entrance to the Jamaica Hilton Hotel; that the shacks were built of round stick posts planted in the earth, with board sidings; that he spoke to a lady and to a man named Vincent who were building these shacks, telling them that the construction would not be allowed to stay there and so they should cease construction; that the lady ceased construction but Vincent continued to construct; that he would value Vincent's shack after construction at \$300.00; that he had never seen either plaintiff at the site where the shack was built.

Mr. Bembridge went on to relate that he was given notices by the Superintendent of Roads and Works to serve on the people who had built the shacks requiring them to demolish the shacks; that he received three copies of each notice; that he got twelve copies in respect of four shacks; that the document put in evidence as exhibit 5 was one of the copies he got; that all notices said the same thing; that after getting an escort from the police station he went to the site to serve the notices; that three of the notices were accepted by the parties concerned; that Vincent was very hostile and refused to take the notice in regard to his shack; that his (the witness') system was that when people refuse to take such a notice he would paste it on the door of the building and he did so in regard to this shack and noted on the copy "deposited on the building" - as appears on the exhibit which shows the date of service of notice as

3rd January, 1975; that he had nothing to do with the demolition of the building; that the shop was not 12ft X 12ft and that it did not have a room attached that was 12ft X 8ft; that the whole building was 12ft X 9ft.

In cross-examination he went on to say that he did not know Vincent's last name; that when he served notice the shop was not being operated as the construction was just being finished by Vincent; that although he passed the shop often he had never noticed any business going on in the shop.

Evidence was given by the second defendant Mr. Stanley Martin, Superintendent of Roads and Works for the St. Ann. Parish Council: he had noticed the construction of the building in its initial stages by one Richardson whom he saw and to whom he spoke; the man to whom he spoke was not the plaintiff McPherson whom he had known for some time; as a result of complaints about the erection of shacks along the road, at a meeting of the Council about 1975 he brought to its attention that shacks were being erected all over the country-side and he sought the Council's approval to serve notices and to demolish at the expiration of the notice; the Council agreed that in the event of the expiration of the notice taking place between meetings, the Mayor should give his approval to be later ratified by the Council.

Mr. Martin went on to say that before the notices were served he had discussed the matter with the Mayor who had given approval for him to proceed; he then took steps to have the notices served by Mr. Bembridge; he inspected the buildings before they were demolished and he would value the building with which we are here concerned at \$200.00; certain goods were taken from the shop when it was destroyed and these goods were stored in a storeroom at the Roads and Works Office, where they remained until Mr. Richardson, the same man who was constructing the building, came and took possession of the goods removed from the shop.

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He denied ever telling the plaintiffs that the Parish Council was going to detain the goods to recover the cost of the demolition because that would have been contrary to the Council's policies as they have never recovered the cost of demolition although entitled by law to do ^{so} ~~so~~. In regard to the building demolished, he said that it was constructed of round and rough wooden uprights planted in the earth, the floor was of broken mettle spread on the earth, the sidings were of second hand wooden materials and the roof was of old zinc sheets.

Another witness called for the defence was Mr. Solomon, Secretary of the St. Ann Parish Council; his evidence related mainly to certain relevant resolutions passed by the Council.

He first referred to a resolution passed on the 13th September, 1973, by which the Council delegated all functions (with certain stated exceptions) to the Roads and Works Committee, a committee made up of all the members of the Council. This resolution is in evidence as exhibit 6.

Next, he referred to exhibit 4, another resolution of the Council passed on 9th January, 1975, relating to the demolition of the building in question; on this document the figure "28" is struck out and "56" substituted - Mr. Solomon testified that he had drafted the resolution with the period of notice as "28 days" but that during the debate an amendment was moved extending the time of the notice from twenty-eight (28) days to fifty-six (56) days; the resolution was approved with the amendment of the period from twenty-eight (28) to fifty-six (56) days and was passed to ratify the service of the notices on 3rd January, 1975, and to authorise the demolition, if necessary.

In cross-examination this witness said that while there was no specific meeting of the Council at which it decided to issue a notice in regard to the building that was demolished, the Council had given general instructions on 20th September, 1973,

to the Superintendent of Roads and Works to demolish shacks along the coast from St. Anns Bay to Ocho Rios and the Superintendent is expected to follow the procedure - he went on to tell the court that at a meeting of the Roads and Works Committee, on a report from the Superintendent about shacks, the Committee had 'recommended' that the shacks be demolished.

Having heard the evidence for the plaintiffs, I found some difficulty in accepting the account Mr. McPherson had given. Here we have Mr. McPherson and Mr. Brown carrying on a very profitable business from which their weekly earnings are four hundred dollars (\$400.00) per week, Mr. McPherson received on the day before the demolition of their shop the notice (exhibit 3 set out above) and does nothing whatsoever. I would have thought that a man in that position, faced with the loss of his very good business would have gone immediately to see the staff of the Parish Council to get an explanation and to have them stay their hand, or at least be present when they come to demolish the building. But instead what we have in evidence is that three (3) days later he is going to the Police Station, and from the police station to the Parish Council.

I ~~infer~~ from the evidence that it was three days after the demolition that he became aware of the demolition and went to the police station, as it seems most unlikely that if he were aware of it earlier he would have delayed making enquiries about it; if then he only became aware of it three days after it had taken place, where was he during those three days, seeing that he carried on business in one part of the building and lived in another? What is more, the defence witnesses all passed the spot frequently and one would have thought that he would have been seen by one of them during the time he was allegedly carrying on business there; Mr. Bembridge quite positively told us that although he passed the ^{building} ~~business~~ often he had never noticed any business going on there.

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While/would say that the witnesses for the defence impressed me as generally straight forward and reliable witnesses I regret I am unable to say the same of the plaintiff, Mr. McPherson, and as a result wherever it conflicts with that of the defence witnesses I am inclined to reject the evidence for the plaintiff and accept that given by the defence, On the evidence my findings are as follows:-

- 1) That in the latter part of 1974 some shacks were ^{erected} along the roadside on lands south of Ocho Rios - St. Ann's Bay main road in the area known as Mammee Bay not far from the entrance to the Jamaica Hilton Hotel without the approval of the Parish Council, which approval was required before their construction.
- 2) That one of the shacks was erected by Mr. Vincent Richardson and not by the plaintiff Mr. McPherson, and that during the course of its erection the Mayor, Mr. Campbell, had spoken to him about it, as also had Mr. Bembridge who was the building inspector and who told him that the construction would not be allowed to remain there.
- 3) That this shack was in the condition described by Mr. Bembridge and Mr. Martin and was worth about \$300.00 and not \$5,000.00 as claimed.
- 4) That the Superintendent had previously received general authority from the Parish Council to prepare and serve notices on persons building shacks at the side of the road without the necessary approval because several of these shacks were being put up along the road.
- 5) That the Superintendent discussed the position in regard to the buildings with the Mayor and issued through Mr. Bembridge, the building inspector, notices to be served on the owners of the buildings advising that unless the buildings were removed within a certain period they would be demolished.
- 6) That in regard to the building in question on the 3rd January, 1975, notice was served on the owner or occupier to have it removed within twenty-eight (28) days or it would be demolished, and this notice was served by being pasted onto the building as the person

on whom it was attempted to effect service refused to accept notice; the scrap of paper produced as exhibit 3 by the plaintiff McPherson was not issued by any of the defendants.

- 7) That on the 9th January, 1975, the Parish Council by resolution ratified the action of the Superintendent and authorised him to proceed with the demolition if the parties failed to comply with the order within fifty-six (56) days of the service of the notice - it will be noted that the time for compliance with the notice was extended a further twenty-eight (28) days by the resolution of the Parish Council.
- 8) That on or about the 6th June, 1975, the first defendant by its servant or agent the Superintendent demolished the building in question.
- 9) That at the time of its demolition there were in the building some goods which were removed from the building before its demolition and stored at the offices of the first defendant.
- 10) That there is a substantial difference between the list of articles as put in evidence by the plaintiff and that put in by the defendants.
- 11) That the list prepared by the first defendant's servant is more accurate than that prepared by the plaintiffs, as while the first defendant put in evidence a list of articles taken from the building by the first defendant's servant, the plaintiffs put in a list prepared by Mr. McPherson a few days after the building was demolished from "a few lists of some goods" and "the rest from personal knowing".
- 12) That the building demolished could properly be described as a shack and that the materials of which ^{it} was made were as described by the defendants' witnesses.

The plaintiffs claim that the building was unlawfully demolished by the defendants and that the defendants are liable in damages for the value of the building. As I have indicated earlier I find that the building was erected without the necessary approval of the Parish Council and that it was demolished by the Superintendent of Roads and Works St. Ann, after notice had been served.

on the owner or occupier of the building by attaching the notice to the building, as the person on whom the building inspector, Mr. Bembridge, had attempted to serve the notice had refused to accept service. In the circumstances I accept Mr. Bembridge's evidence on this point and I find that there was proper service of the notice. This notice was served on 3rd January, 1975, under the provisions of section 23 of the Town and Country Planning Act, there is no evidence of any action taken to challenge the notice as provided for in the same section, and on 6th June, 1975, the building was demolished by the Superintendent.

The plaintiffs claim that the action of the Superintendent was illegal as he acted without proper authority. The law empowers the "local planning authority" to act in these matters and this means the Parish Council of the parish in which the land and building are located; so it is clear that the authority in this case is the St. Ann Parish Council. Here, the evidence is that the Superintendent had previously received general authority from the Parish Council to prepare and serve notices under the provisions of section 23 of the relevant Act and that after a discussion with the Mayor he had issued the required notices which were served on 3rd January, 1975. In addition the Parish Council on 9th January, 1975 passed a resolution in the following terms:

Exhibit 4

R E S O L U T I O N

" RESOLVED that Notice having been served in accordance with sub-section 2 of Section 23 of the Town and Country Planning Law 1957 on the following persons:-

Lillian	Findley
Valda	Davis (Mrs) (2)
Occupier	

for the demolition of buildings erected on the Mamme Bay property, South of the Ocho Rios Main Road, in breach of the Town and Country Planning (St. Ann Coast) Confirmed Development Order 1966

made under the Town and Country Planning Law 1957 BE HEREBY authorises the Superintendent Roads and Works in accordance with sub-section 1 of Section 24 of the Town and Country Planning Law 1957 to enter on the land and effect the demolition of the said buildings, if at the expiration of the ⁵⁶28 days Notice, the parties concerned have failed to comply.

MOVED BY	W. G. BAILEY
SECONDED BY	G. A. CAMPBELL
DATE	9/1/75

Passed by the St. Ann Parish Council at its meeting held on the 9th January 1975.

W.A. Solomon
S.P.C.
9/1/75 "

This resolution purported to ratify the service of the notices served earlier on 3rd January, 1975, and to authorise the Superintendent of Roads and Works to proceed with the demolition if the notices were not complied with.

Evidence had earlier been adduced by the defence that on the 13th September, 1973, the Parish Council passed a resolution whereby it appointed a Roads and Works Committee composed of all members of the Council and delegated to it the all functions exercisable by the Council, except the power to fix rates, to borrow money or to authorise expenditure not provided for in the approved estimates. Then on 20th September 1973 at a meeting of the Roads and Works Committee a resolution was passed directing the Superintendent to demolish shacks erected along the road-side without permission or approval of the Parish Council. The Superintendent in reliance on this resolution issued the notices which were served on 3rd January, and 9th January, 1975, the Parish Council by resolution set out above ratified

his action.

The attorney for the plaintiffs argued that the service of ~~the~~ notice had been without authority as the power was given by the Act to the Parish Council and if the Parish Council could delegate its powers to the Roads and Works Committee, this Committee could not re-delegate its power to the Superintendent; further it was submitted that the Council cannot ratify or give retro-active validity to the act of the Superintendent in the issue of notices.

Here the plaintiffs' attorney, as I understand it is saying that the maxim "delegatus non potest delegare" applies. But in Halsbury's Laws Vol. 1 (3rd ed.) at paragraph 399 it is stated:

" To the maxim delegatus non potest delegare there are certain well recognised exceptions";

then in paragraph 402, ibidem, it says:

" where the principal knows of the agent's intention at the time of his employment to delegate, or subsequently acquiesces in the delegation, or where the very nature of the employment necessitates a partial or total delegation, the rule can have no application."

In this case the authority is vested by the Town and Country Planning Act in the Parish Council, a body which must act through servants ~~of~~ agents; for reasons of convenience, apparently, the Council vests most of its powers in the Roads and Works Committee, including the powers vested in it under the Town and Country Planning Act. This committee is made up of the same persons who make up the Council and again this Committee is a body which must act through its servants or agents. The Superintendent as chief executive officer of the Council would seem to be the officer on which this Committee would rely to carry out its functions, and directions would from time to time be issued by the Committee to the Superintendent.

The resolution of the 20th September, 1973, was one such direction, as I understand it, to the Superintendent to take steps, as required by the Town and Country Planning Act, to deal with the shacks erected without approval from time to time.

I find that the present case is an exception to the maxim referred to above and that the Roads and Works Committee could properly delegate authority to the Superintendent. But in this case, not only was there such a delegation but there was also a ratification on the 9th January, 1975, by the Parish Council of the service of/notice by the Superintendent on the 3rd January, 1975, and authority to demolish, if necessary.

Again, it was submitted by the plaintiffs' attorney that the Council cannot ratify or give retro-active validity to the issue of a notice by a person who had no authority to give it. On this submission I would begin by pointing out that the Superintendent was the person through whom the Council or the Committee would act in matters of this kind and that the Superintendent had previously been authorised by the Committee to take action in regards to the shacks. It seems to me that as a general rule most acts of an agent may be ratified by the principal provided it was capable of being done by the principal himself, and the act of issue of the notices here is no exception to this general rule. Here the notice was issued on the 3rd January, 1975, and the Council ratified it on the 9th January, 1975. In Halsbury's Laws Vol. 1 (3rd ed.) at para 415 it is stated that:

" As to the time within which ratification may take place, the rule is that it must be either within a period fixed by the nature of the particular case, or within a reasonable time, after which an act cannot be ratified to the prejudice of a third person. Thus an unauthorised notice to quit can only be ratified by the landlord within the period for giving notice....."

Here, it seems to me that the ratification, taking place as it did six (6) days after the notice was served, had taken place within a reasonable time and that the ratification did give retro-active validity to the notice served.

The point was also taken that the notice served had fixed a period of twenty-eight (28) days after which the building would be demolished, but that the resolution of ratification by the Council had fixed a period of twenty-eight (28) days which was altered in the resolution to fifty-six (56) days; it will be noted that the Act provides a minimum period of notice of twenty-eight days, and I would say that the extension of this period from twenty-eight days to fifty-six days does not in any way affect the validity of the notice served or of its ratification.

Accordingly, I find that the second and third defendants did not enter unlawfully on the lands where the building was situated and that the demolition of the building was lawful, being in accordance with the Town and Country Planning Act. The plaintiffs therefore fail in their claim for the value of the building demolished, and for the loss of earnings from the business allegedly carried on in the building.

I turn next to the claim for the value of the goods removed from the premises.

Mr. Nelson, an employee of the first defendant testified that on or about 6th June, 1976, he received instructions from the Superintendent Mr. Martin, as a result of which he handed over to one Vincent Richardson some of the articles taken from the building which was demolished, and that Mr. Richardson returned on subsequent occasions and received more of the articles; this continued for about two (2) months until about the end of July, 1976, when he came with a mini-bus and removed the remainder of the articles.

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The records disclose that on the 15th June, 1976, the defendants entered an appearance in this case, and so the plaintiffs' writ must have been served on them prior to this date. It is in evidence that Mr. Martin, Superintendent of Roads and Works to the St. Ann Parish Council, recalls claims being made on the Council by Mr. Dennis Richardson, attorney-at-law, on behalf of the plaintiffs, and that Miss Innerarity, the then Assistant Secretary of the Council was in correspondence with the plaintiffs' attorney in regard to this claim. It is reasonable to assume that this took place before the plaintiff embarked on legal action and I draw the inference that the first defendant must have been aware of the plaintiffs' claim before any of the goods taken from the building were handed over to Mr. Vincent Richardson, i.e. before the 6th June, 1976. The first defendant had notice that a claim was being made by the plaintiffs in respect of the goods in their possession at the time, and, despite this, they handed over the goods subsequently to someone else without taking proper steps to ascertain the owners.

The plaintiffs claim these goods and the defendants are unable to disprove their claim. It seems to me that the first defendant was negligent when they handed over the goods to Mr. Vincent Richardson after they had become aware that the goods were being claimed by the plaintiffs. The first defendant hereby taking into their custody the various articles found in the building created a bailment and became a bailee in respect of these goods. It follows then that if through their negligence the goods the subject of the bailment were lost or destroyed they would be liable to the owners thereof. The plaintiffs have claimed the goods handed over to Mr. Vincent Richardson as theirs, the defendants are unable to disprove this claim and as they have negligently lost the goods, I would say that the first defendant is liable to the plaintiffs for the value of the goods.

This brings me to the next question: what goods were handed over and what was the value of those goods?

The plaintiffs have produced a list (exhibit 2) and as I understand the evidence this is a list prepared subsequent to the demolition of the building and the removal of the goods; having regard to the variety and number of articles appearing on their list, it seems to me quite impossible that such a list can be accurate.

On the other hand there is also in evidence (exhibit 1) a list of the articles which the first defendant's witness - Mr. Nelson - building inspector - says is the list of articles which was delivered to Mr. Vincent Richardson over a period of two months, and which was the list of articles taken from the demolished building.

I am inclined to the view that Mr. Nelson's list is the more accurate, and I accept his list as setting out the various items taken from the building before its demolition. I also accept his evidence as to the general condition of these articles; he stated that many of the articles were household articles in a very poor state and of little value. In addition to the household articles there were other used personal effects and there were curios such as would be found in a curio vendor's shop - such as straw hats, cowhorns, birds, etc.

I note that the plaintiff, Mr. McPherson, testified that three days after the building was demolished he went to the Parish Council Office to inquire why the building had been demolished and to make inquiries about the goods in the building; he went on to say that Mr. Martin told him that the goods would not be given up until he had got paid "for destroying the place". This was denied by Mr. Martin, who could not recall speaking to Mr. McPherson at that time, and went on to say that it is unlikely that he did as he would have had some recollection of so doing; Mr. Martin further testified that he can say for certain that he did not tell Mr. McPherson that the goods would not be given

up until he was paid for destroying the place because it would be contrary to the Council's policies as that has never been done by the Council. Having heard Mr. Martin and Mr. McPherson I accept Mr. Martin's evidence on this point.

It is clear from Mr. McPherson's evidence that he did not return to the Parish Council to claim the goods up to when the writ in this case was issued in 1976, presumably because he had put the matter in the hands of his attorney who had communicated with the first defendant. The court must arrive at some valuation of these goods at the time when they were disposed of by the first defendant, one year after they had been removed from the building by the servants of the first defendant, or at the time when the building was demolished. The plaintiffs claim that these goods were valued at \$5,201. 60 while the first defendant's witness, Mr. Nelson testified that the total value of the goods was about \$600.00 - \$650.00. It seems to me that the true value is somewhere between these figures. I note that there were the curios, the tools, household articles and personal used clothing, as also that there was quite a large number of articles made of straw which were presumably being offered for sale:- hats, bags, ladies hand bags, place mats, baskets, fruit holders and glass holders.

Accepting as I do the evidence as to the particular articles removed from the building by the agents of the first defendant the question arises as to the time at which their value should be determined for the purposes of this case.

It does ^{not} seem to me that the proper date should be the date of demolition of the building as the plaintiffs were aware by their own evidence that the first defendant intended to demolish the building on the day on which it was done and took no steps to remove their goods or to challenge the action of the first defendant and were not even present to protect their goods at the time of demolition.

As a consequence the first defendant adopted the only practicable course, namely, to remove the goods to a place of safe keeping until the goods were claimed and they were satisfied as to the ownership of the claimants.

In all the circumstances it seems to me that the plaintiffs are entitled to damages in a sum equivalent to the value of the goods at the time when these goods were disposed of by the first defendant, viz., in June, 1976, as it was reasonable for the first defendant to wait and make inquiries as to the ownership of the goods. There are no means whereby the value of the individual items at the time can be assessed and a total of all the articles arrived at. I have to bear in mind that the value of articles such as those under consideration vary greatly depending on the quality of the material and of the workmanship; I must bear in mind too that the value of many of these articles would have decreased by the time they were disposed of (after a year in storage) and no blame for this could^{be}/laid at the door of the first defendant. Further I must take into account that many of the items are used household articles, used tools, and used clothing, none of which would be of much value. Having regard to the evidence as to the condition of those goods at the material time, it seems to me that a fair award for the value of the goods would be the sum of \$1500.00 and I award this sum to the plaintiffs to be paid by the first defendant.

There will therefore be judgment for the plaintiffs in the sum of \$1500.00 against the first and second defendants; there will also be judgment for the third defendant against the plaintiffs.

In regard to costs, the plaintiffs are to have their costs paid by the first and second defendants and the third defendant is to have his costs paid by the plaintiffs, such costs to be recoverable by the plaintiffs from the first and second defendants. The plaintiffs are also to have interest at 6% on the amount awarded as from 15th June, 1976.